

**REMARKS**

Claims 1-45 are pending in the application. Claims 6, 7, 16, 17, 26, 27, 36 and 37 have been objected to but have been indicated as having allowable subject matter. Claims 1-5, 8-15, 18-25, 28-35 and 38-40 have been rejected. Claims 1, 3, 6, 7, 8, 11, 13, 16, 18, 23, 28, 31, 33, 36 and 38 have been amended. Claim 15 has been cancelled. New claims 41-45 have been added. At least in light of the above amendments and the following remarks, Applicant respectfully requests reconsideration and allowance of all claims.

***Allowable Subject Matter***

Claims 6, 7, 16, 17, 26, 27, 36 and 37 have been indicated as having allowable subject matter.

Claims 6, 16 and 36 have been amended into independent form and should be allowed. Claims 7, 17 and 37 are dependant and should also be allowed.

Applicant acknowledges the allowable subject matter of claims 26 and 27.

***Claim Rejections – 35 U.S.C. § 102***

Claims 1, 2, 4, 5, 8-12, 14, 15, 18-22, 24, 25, 28-32, 34, 35 and 38-40 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,697,353 (Bharucha, et al.).

Claim 1 has been amended. Support for the amendment may be found in the present specification, page 10, lines 17-15. Namely, the claimed feature takes advantage of the fact that the human brain is sensitive to sound transitions. Sounds associated with these transitions are assigned a different discardability.

Bharucha fails to teach the claimed element. Bharucha discloses marking speech activity without consideration to a speech type of adjacent cells. *See*, Col. 5, lines 1-39. Thus, Bharucha fails to teach associating a different comparative discardability with the data speech frame when there are differences between the frame and the adjacent frames.

In contrast, claim 1 includes the element of associating a different comparative discardability with the data speech frame when there are differences between the frame and the adjacent frames. As a result, the human brain's sensitivity to sound transitions is accommodated. Thus, claim 1 should be allowed. Claims 2, 4 and 5 are dependant and should also be allowed. Claims 8, 11 and 18 have been amended and should be allowed for at least similar reasons as claim 1. Claims 9, 10, 12, 14, and 19-20 are dependant and should also be allowed.

With respect to claim 21, Bharucha fails to teach at least the element of transmitting the data packets through a packet switched network.

Bharucha teaches transmitting cells on an ATM/STM network that is circuit-switched, not packet switched. In other words, an ATM/STM network is connection oriented. A virtual circuit is established, and all call data follows the same established virtual circuit. See col. 3, lines 28-45. When the virtual circuit is disrupted, the call fails.

In contrast, claim 21 teaches the element of transmitting the data packets through a packet switched network. Packet switched networks are not dependant on a circuit switched or virtual circuit switched connection and are thus much more robust. The device of Bharucha is vulnerable to weather, accidents, etc. Thus, claim 21 should be allowed. Claims 22 and 24 are dependant and should also be allowed.

Claims 28, 31 and 38 have been amended and should be allowed for at least similar reasons as claim 1. Claims 22, 24, 25, 29-30, 32, 34, 35 and 39-40 are dependant and should be allowed.

#### ***Claim Rejections – 35 U.S.C. § 103***

Claims 3, 13, 23 and 33 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bharucha.

Claims 3, 13, 23 and 33 are dependant and should be allowed for at least the same reasons as their independent claims. Claims 3, 13, 23 and 33 have been amended for clarification.

Applicant challenges the unsupported factual assertions made by the Examiner. See MPEP 2144.03C. The Examiner suggests that modifying Bharucha to classify voice activity into a finer detail was obvious. This is traversed. Moreover, before making finer classifications one of ordinary skill in the art would first have to recognize that such finer classifications were beneficial.

#### ***New Claims***

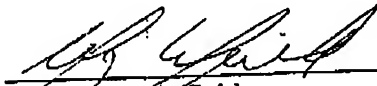
New claims 41-45 have been added. Support for the new claims may be found in the present specification, page 10, lines 17-15.

**CONCLUSION**

For the foregoing reasons, reconsideration and allowance of claims 1-14 and 16-45 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

  
\_\_\_\_\_  
Michael A. Cofield  
Reg. No. 54,630

MARGER JOHNSON & McCOLLOM, P.C.  
210 SW Morrison Street, Suite 400  
Portland, OR 97204  
503-222-3613

**Customer No. 20575**